

COMPLIANCE BOARD OPINION NO. 99-11

August 12, 1999

Mr. Bob Mosier
Maryland Gazette

The Open Meetings Compliance Board has considered your complaint dated June 9, 1999, in which you alleged that, at a meeting held on June 3, 1999, the Citizens Advisory Committee for Corrections Institutions violated the Open Meetings Act by excluding a reporter from your newspaper. For the reasons stated below, the Compliance Board finds that the Act was violated.

I

Complaint and Response

Your complaint stated that the Citizens Advisory Committee for Corrections Institutions advertised the June 3 meeting throughout the Jessup community and encouraged residents to come and share their opinions on the recent escape of two prisoners from a correctional facility in Jessup. When Brian Boyer, a reporter from the *Gazette*, arrived, he was informed by a correctional officer that the meeting was open only to members of the community. The Commissioner of Corrections, Dr. William Sondervan, had ordered the meeting closed to the press.

In the Committee's response, President Melanie Gutjahr acknowledged that the meeting was closed to the press, pursuant to Commissioner Sondervan's decision. Ms. Gutjahr commented that she "respectfully disagreed" with the Commissioner's decision to bar the press from the meeting.

Commissioner Sondervan also responded to the complaint, to explain the basis for his decision. Noting the "highly charged atmosphere" following the escape, Commissioner Sondervan stated that he "knew the tensions at the meeting would run high, and felt it extremely important that the members of the community be able to freely express their concerns regarding the escape. Similarly, I felt it important that Division [of Correction] officials be able to speak candidly about the escape and the corrective measures the Division

was implementing to improve security at [the Jessup facility]. In his view, “the presence of the media at the meeting would have tended to frustrate these goals.” He now recognized, however, that members of the press should have been admitted to the June 3 meeting, apologized for the error, and noted that the press did attend the Committee’s next meeting.

II

Analysis

The Citizens Advisory Committee for Corrections Institutions is a public body subject to the Open Meetings Act. The core provision of the Act is that, with exceptions not pertinent here, “a public body shall meet in open session.” §10-505 of the State Government Article. “Whenever a public body meets in open session, the general public is entitled to attend.” §10-507(a). An open session is one in which “citizens [are] allowed to observe the performance of public officials and the deliberations and decisions that the making of public policy involves.” §10-501(a)(2).

Notably, in its statement of legislative policy, the General Assembly found that “[t]he ability of the public, its representatives, and *the media* to attend, report on, and broadcast meetings of public bodies ... ensures accountability of government to the citizens.” §10-501(b)(1) (emphasis added). Thus, the Act presupposes that reporters, like other members of the public, are free to attend open meetings.

This assumption reflects our country’s longstanding recognition that the press plays a vital role in ensuring public awareness of government activities. The First Amendment itself is proof that “the Constitution specifically selected the press ... to play an important role in the discussion of government affairs”. *Mills v. Alabama*, 384 U.S. 214, 219 (1966). Indeed, the public usually learns about the operations of its government not through firsthand observation but rather “chiefly through the print and electronic media.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572-73 (1980). Reporters have been identified by the Supreme Court as “surrogates for the public” and characterized as “play[ing] a unique role as a check on government abuse” *Richmond Newspapers*, 448 U.S. at 573; *Leathers v. Medlock*, 499 U.S. 439, 447 (1991).

Discussing the right of the press to attend open court proceedings, the North Dakota Supreme Court observed that “[t]he right of access accorded the public must also be accorded to the media because the media not only constitute a part of the general public but also operate as agents or surrogates for the general public in gathering and disseminating

information.” *KFGO Radio, Inc. v. Rothe*, 298 N.W. 2d 505, 511 (N.D. 1980), *modified on other grounds* 338 N.W.2d 72 (1983). Likewise, the United States Supreme Court, discussing the observation of trials by the public and the media, noted that “[t]he media representatives enjoy the same right of access as the public” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. at 573. *See also Hearst Corp. v. State*, 60 Md. App.651, 658, 484 A.2d 292 (1984) (discussing the right of the public *and* press to attend trials and inspect court records).

When the Maryland Open Meetings Act requires a meeting to be open, it must be open to all. The Act does not contain an intermediate category of “partially open” meetings, to which some members of the public are admitted and others excluded. *See Neu v. Miami Herald Publishing Co.*, 462 So. 2d 821, 823 (Fla. 1985).¹ “The requirement that meetings be open to the public encompasses all the public” Ann Taylor Schwing, *Open Meeting Laws* 227 (1994). Accordingly, a public body may not bar reporters from an open meeting.

III

Conclusion

In the opinion of the Compliance Board, the exclusion of the press from the Committee’s June 3 open meeting violated the Open Meetings Act, as Commissioner Sondervan himself soon recognized.² Perhaps it would have been true, as Commissioner Sondervan feared, that the presence of reporters would have made the discussion less candid. But if so, that is the price of greater government accountability.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim
Courtney McKeldin
Tyler G. Webb

¹ If a meeting is properly closed, a public body may admit selected staff members or others whose presence will contribute to the decision making process. *See Compliance Board Opinion No. 92-1* (October 15, 1992), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 1.

² The Compliance Board is gratified that Commissioner Sondervan acted promptly to ensure press access to the Committee’s next meeting.